Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

IN RE FRED A. WHITAKER

PETITIONER

V

ANDRONICO'S MARKET, SAFEWAY CORPORATION, SMART AND FINAL, SOUZA'S LIQUOR AND DELI ALBERTSONS CORPORATION AND RALPHS MARKETS AND CALA FOODS

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF CALIFORNIA'S RULING OF February 22nd, 2006

PETITION FOR WRIT OF CERTIORARI

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[A] QUESTIONS FOR REVIEW:

BRIEF INTRODUCTORY STATEMENT: The State of California in 1965 Instituted A Security Bonding Statute **CCP 391 AKA Vexatious Litigant Statute.**

California's Court of Appeal during 1965 to 1968 Ruled **CCP 391** Constitutional based on a few court ruling including Vinncombe V state of California **172 Cal.App.2d at p. 59.**

In 1985 California's Supreme Court In Breadreau V Los Angeles County **121 Cal. Rptr. 585** relying on various United States Supreme Court Ruling and by overturning VinnCombe V State of California **172 Cal.App.2nd at p. 59.**

Petitioner in 1992 was determined to be a vexatious Litigant. From 1965 to 2006 approximately over 3500 individuals were declared a vexatious litigant.

Vexatious Litigant Statute Under **CCP 391(B)(1)** had a seven year **statute of**

Limitations and 5 adverse ruling during that time period.

From 1965 till 2005 only 1 individual in 2002 approximately had been removed from the **Vexatious Litigant Statute CCP 391** during this Forty Year Time Period.

The Trial Court on April 13, 2005 determined Petitioner was a **Vexatious Litigant** under following conditions:**[1]** During a Nine Year Time Period **(** October 1995 to October 2004**) [2]** Without Notice and Opportunity To Respond to Basis of Court's ruling on April 6th, 2005 **[3]** Court relied upon facts (March 14,28 & 29, 2005) that were not on the Court record as of Hearing Date of 1/13/05 **[4]** The facts court relied upon had no supporting evidence. This Violated Statutory **(**Evidence Code 550**)** and Case Law.**[6]** Petitioner had 4 adverse ruling during 9 year time period

[A] QUESTIONS PRESENTED FOR REVIEW

[1] All State Courts[Supreme/Appeal And Trial Courts] Are Mandated Under Stare Decisis To Enforce A Litigant's [Including Vexatious Litigant's] 1st , 5th , and 14th Amendments Ruling Made By United States Supreme Court Ruling , On A General Principle On A Particular Subject Matter.

[2] California State Courts are Mandated Under Stare Decisis to Protect All Litigants, 1ST, 5TH AND 14TH Amendment Rights On Court Ruling Made By The United States Supreme Court Concerning, Legal Principle That All Security Bonding Property Rights Cannot Be Taken Without A Prior Hearing On It's Merits.

[3] California State Courts Violate Any Litigant's [Including Petitioner's] 1ST, 5TH AND 14TH Amendments By It's Failure To Apply As Stare Decisis Court Ruling By The United States Supreme Court Ruling That A Litigant's

Constitutional Right Of Due Process Is Violated When Their Property Is Taken [Money Or Case Dismissed] Without A Hearing On It's Merits Is Applicable To California's Vexatious Litigant Statue.

[4] California State Courts Are Mandated To Apply As Stare Decisis Court Ruling By The United States Supreme Court Ruling That Pertain To Property Rights [Including Security Bonding] Prima Facie As A Legal Standard Is Applicable To California's Vexatious Litigant Statute

[5] California's State Courts Violated Petitioner's Constitutionality Protected Right of Due Process Before An Impartial Judge By Engaging In Following Acts:

[A] Both Trial And Appellate Court Made Court Ruling When It Lacked Legal Authority By Statutory And Case Law To Act.

[B] Both Trial And Appellate Court Engaged In Judicial Procedures Where Petitioner Was Denied Notice And Opportunity To Respond To it's Factual Basis of concerning My Legal Property Rights

[C] Both Trial And Appellate Court Failed To Provide Petitioner With Specific Facts And Or Law It Relied Upon Prior To Making It's Tentative And Or Final Determination Of Petitioner's Legal Rights

[D] Both Trial And Appellate Court Determination Of Petitioner's Legal Rights Was Based On Facts/Allegations That Were Not On The Court Record As Of The Hearing Date [1/13/05]

[E] Both Trial And Appellate Courts Determination Of Petitioner's Legal Rights Was Unsupported By Evidence As Required By Statutory And Case law.

[F] Both Trial Court And Appellate Courts Failed To Consider, Review and or Apply Stare Decisis Ruling Made By The United States Supreme Court On General Principles Of Law On Specific Subject Topics Relevant To Subject Matter of Hearing

[6] California's Courts Failed To Apply Principles Of Law Established By United States Supreme Court Ruling Which Breadreau V LA Superior Court 121 Relied Upon Such As ;

[A] Due Process Mandates A Hearing On The Merits For Security Bonding Prior To Any Litigant's Property Being Taken By Judicial Process

[B] All Litigants' Property Right In Security Bonding Actions Entails A Right A Prima Facie Legal Standard of Review

[C] All Litigants' Right To Informa Pauperis Must Be Determined Prior To Any Security Bonding Determination

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[7] The Vexatious Litigant Appeal Process Which Has No Factual/Legal Determination of Their Merit Violates Petitioner's Due Process

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. CITATIONS OF THE OFFICAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN THE CASE

In this case there were no Opinions issued by the court of Appeal. A Copy of The relevant Court Orders are included in the **APPENDIX [Exhibit1** April 6th,2005 Court Order **Exhibit#2** Order Overruling Demurrer **Exhibit#3** Order Denying Petition **Exhibit#4** Order Denying Appeal & Motion of Disqualification **Exhibit#5** Court of Appeal Order Dismissing Appeal and Bias Claim **Exhibit#6** Court Order California Supreme Court Nov 2, 2005 Denial **Exhibit#7** Court Order California Supreme Court Feb 22, 2006 Denial **Exhibit#8** Trial Court Minute Order **Exhibit#9** Trial Court Order denying New Trial and Vacate Judgment **Exhibit#10** Order of Dismissal **Exhibit#11** Trial Court Order To Furnish Security Bonding **Exhibit#12** Notice Of Stay of

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JURISDICTION STATEMENT: California's Supreme Court on February 22nd, 2006 denied my Petition for Review.. The trial Court never certified To The State Attorney General That The Constitutionality of CCP 391 was drawn into question.

THE CONSTITUTIONAL, PROVISIONS STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE:

California Code of Civil Procedure 391, California State Constitution Due Process And Equal Protection and The Federal Constitution 14th amendment are the Statutes and Constitutional provisions involved in this matter.

Exhibit# 14 contains the full body of the text of the statutes and Constitutional provisions involved in this Writ.

STATEMENT OF CASE: SETTING OUT FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED...ETC

TRIAL AND CALIFORNIA'S APPELLATE COURT BOTH LACK JURISDICTION TO APPLY CP 391(B)(1) AGAINST PETITIONER

Petitioner made trial and Appellate Courts aware that **CCP 391** was applicable only within preceding seven year time period. Petitioner sought a Vexatious Litigant Determination During October of 1995 to October 25, 2004. This was a period of approximately **NINE YEARS.** **CCP 391(B)(1) had a preceding seven year STATUTE OF LIMITATIONS.** Therefore California's Trial and it's Court of Appeal both **LACKED LEGAL JURISIDCTION TO APPLY CCP 391 AGAINST PETITIONER.**

California's Trial And Appellate Court Of Appeal Disregarded It's Lack Of Legal Jurisdiction Requirements To Apply CCP 391(b) (1) Against Petitioner

Petitioner At Original Vexatious Litigant Determination Hearing On 1/13/05 And Subsequent Months Between May And September Of 2005 Made The Trial And Appellate Court Aware Under Stoltz V Bank Of America 19 Cal. Rptr2D At 19 That During Seven Year Time Period Of October 25, 1997 To October 25, 2004 Petitioner Had Less Than 5 Adverse Ruling. Thus Vexatious Litigant Statute Under CCP 391 Was Not Applicable As a Mater of Law Towards Petitioner

Petitioner on at least 5 different occasions during December of 2004 to September of 2005 made trial court and Appellate Court of Appeal that **Stoltz V Bank of America... etc 19 Cal. Rptr2d at 19** was controlling as **State Decisis** and that facts being alleged made **CCP 391 inapplicable to Petitioner.** Trial and Appellate Court Refused To Abide By **Stoltz V Bank of America 19 Cal. Rptr2nd at 19** which was controlling.

Petitioner Made Trial Court And Appellate Court Of Appeal that Stare Decisis United States Supreme Court Ruling Relevant To My Constitutional Rights Involving Security Bonding Were Binding upon Them Which They Failed To Consider/Follow :

Petitioner during February to September of 2005 made the trial Court and the Appellate Court of Appeal on at least five different occasions aware that **United States Supreme Court. Board of Regents V Roth 408 U.S. 564; Perry V Sindermann 408 U.S. 593, 601** established as a general principle of law before a litigants property rights could be taken all litigants have a constitutional right to provide an opportunity under due process to be heard on the merits..

Both Trial Court and Appellate Court of Appeal during March to September of 2005 refused to consider on at least five different occasions to review Petitioner's position that **United States Supreme Court Ruling** mentioned above were controlling and made **CCP 391 unconstitutional**

in light of CCP 391.2 having no hearing on merits prior to petitioner's property rights being taken.

California's Trial And Appellate Court Of Appeal Refused To Apply United States Supreme Court Relevant Stare Decisis Ruling That Established As A General Principle Of Law That Prior To Taking A Litigant's Property Rights In Security Bonding Actions A Hearing On The Merits Is A Due Process Right Which CCP 391.2 Did Not Have

Petitioner made both the trial and Court of Appeal on at least five different occasions that the **United States Supreme Court Ruled in** Mitchell V W.T. Grant supra at 416 U.S. at 604, Arnett V Kennedy Supra at 416 U.S. at p 170 **mandated that Due process required a prima facie right to one's property rights pertaining to security bonding.**

Both the trial and Court of Appeal refused to consider, review and apply **United States Supreme Ruling** in above cases which mandated under **Due Process as a right to Prima Facie as**

a standard pertaining to Security Bonding Statutes.

Petitioner during March to September of 2005 made trial and Court of Appeal aware on at least 5 different occasions that **United States Supreme Court Ruling** in Arnette V Kennedy 416 U.S at 134, 170 that in security bonding cases where a litigants' property rights are taken and or dismissed without a hearing constitutes an Violation of one's Due Process Rights. Both Trial and Court of Appellate refused to consider, review or apply **United States Supreme Court Ruling** In Arnette V Kennedy 416 U.S. at 134, 170 that statutes pertaining to security bonding under **Due Process mandate that property interest that is dismissed or taken without a hearing on the merits constitutes an illegal taking of one's property rights.**

California's Trial And Court Of Appellate Appeal Refused, To Consider/ Review Or Enforce Relevant United States Supreme

Court Ruling Which Determined That Pertaining To Security Bonding Actions Taking or Dismissing Their Property Rights Without a Prior Hearing On The Merits Constituted A Violation of Our Constitutionally Protected Due Process Legal Rights Protected

California's Trial Court And Court Of Appeal In Making Their Ruling On April 6TH, 2005 And June To September 2005 That Petitioner Was A Vexatious Litigant Violated Constitutionally Protected Due Process By [A] Lacking Legal Jurisdiction Under CCP 391(b)(1) [B] Failing To Provide Petitioner With Notice & Opportunity To Respond To Court's Factual/Allegations [C] Relying On Allegations That Were Not On Court Record As Of Hearing Date of 1/13/05 [D] Relying On Factual Allegations Not Supported By Any Evidence

UNDISPUTED FACTS

Trial Court Judge made Ruling pertaining to 1/13/05 hearing on **April 6th, 2005** as Follows: The hearing date of Trial Court to Rule whether I was a Vexatious Litigant was 1/13/05. Trial Court made **Ruling that I was a Vexatious Litigant on April 6th, 2005 with 4 adverse ruling.** This was over 9 years and less than 5 adverse ruling

statutory requirements [1995 to 2005] [**Lacked Legal Jurisdiction – Violation Due Process]**

[1] TRIAL AND APPELLATE COURT LACKED LEGAL JURISDICTION TO APPLY CCP 391(b)(1)

[2] Trial Court **Ruling** on April 6th, 2005 was done **without any NOTICE AND OPPORTUNITY TO RESPOND. [Violation of Due Process]**

[3] Trial Court Ruling on April 6th, 2005 relied on events of March 14th, 28th and 29th, 2005 and other allegations not on Court Record As 1/13/05. **[Violation Of Due Process]**

[4] Trial Court Ruling on April 6th, 2005 relied on facts outside court record as of 1/13/05 hearing date. These facts had no supporting evidence. **[This Constituted Violation Due Process]**

[5] Trial Court Ruling on April 6th, 2005 never addressed Constitutionality of **CCP 391** as pertaining To Stare Decisis United States

Supreme Court & California's Supreme Court Ruling.

Petitioner in February of 2005 and in other moving papers raised issue that **CCP 391** was Unconstitutional under Breadreau V Los Angeles County 121 Cal. Rptr. 585. **Trial Court refused to Review and or Consider Breadreau V Los Angeles County 121 Cal. Rptr. 585 as being applicable to Constitutionality of CCP 391.**

California Trial and Appellate Court Judges Engaged in [a] Lack of Jurisdiction **[b]** No Notice and Opportunity To Respond To it's Ruling **[c]** Court relied upon facts that were not upon Court record **[d]** Court lacked any specific facts, laws it relied upon in making it's legal conclusion that no reasonable probability existed **[e]** Court did not sign it's opposition under the penalty of perjury as required by law **CCP 464**

HOW THE QUESTIONS ON REVIEW WERE ADDRESSED

The trial court, The Court of Appeal and California's Supreme Court failed to review/considered the questions on review.

CONSIST ARGUMENT AMPLYING THE REASONS FOR THIS WRIT:
Pages 11-30

LEGAL ARGUMENT # ONE

THE 1ST, 5TH AND 14TH Amendments Provide All Litigants With Right Of Access To Judicial Procedures Which Insure The Pursuit Of Justice Thru Fairness Which California's Trial & Courts Of Appeal Ruling Has So Deviated From Principles Of Law By This United Supreme Court As To Warrant This Court's Action.. **Pages 11-20**

. This Court In **109 U.S. 11, 17 ruled** that the 14th amendment makes void any State Action of every kind which is inconsistent with the guarantees therein contained and extends to manifestations of state authority in the shape of laws, customs or judicial or executive proceeds

The courts have ruled in **Abelleria V District Court of Appeal 17 C.2d supra at 283** that: **Lack of Jurisdiction** is not limited to these fundamental situations. For the purpose of determining the right to review by certiorari, restraint by prohibition or dismissal of an action, a much broader meaning is recognized. Here it may be applied to a case where, through the court has jurisdiction over the subject matter and the parties in the fundamental sense, **it has no jurisdiction (or power) to act except in a particular manner, or to give certain procedural prerequisites.** Thus a probate court with jurisdiction of an estate and therefore over the appointment nevertheless acts in excess of its jurisdiction if it fails to follow statutory provisions governing such appointment **See Texas Co. V Bank of America 5 Cal.2d 35,39.**

MATERIAL DEVIATION NUMBER#1 BY CALIFORNIA'S TRIAL AND COURT OF APPEAL: They Both Lacked Legal Jurisdiction By Failing To Determination Vexatious Litigant Within 7 Year Period [October 25, 1997 TO October 25, 2004 And 5 Adverse Ruling Which Was A Gross Deviation From General Principle Of Law [Statute Of Limitations] Applicable To CCP 391(B)(1)

MATERIAL DEVIATION NUMBER 2: California's Trial And Courts Of Appeal By Failing To Consider Review Or Apply Stare Decisis United States Supreme Court Ruling On General Principles Of Law On Specific Factual/Legal Issues Associated With Security Bonding In General Constitute A Violation Of Petitioner's Due Process, Equal

Protection And Right To Petition The Government Considering Petitioner's Grievance

(a) United States Supreme Court Ruled In **Board of Regents V Roth 408 U.S. 564; Perry V Sindermann 408 U.S. 593, 601** established as a general principle of law before a litigants property rights could be taken all litigants have a constitutional right to provide an opportunity under due process to be heard on the merits **CCP 391.2 has** no requirement of a hearing on the merits prior to a litigant's property being taken or dismissed under **CCP 391.4.**

California's Trial and Appellate Courts' failure to comply with Stare Decisis Ruling by **United States Supreme Court Ruling cited in Breadreau V Superior Court 121 Cal. Rptr. 590, 592 is conflicts with Stare Decisis Supreme Court Ruling on General Principle associated**

with specific subject matter [property rights and due process violations].

[B] United States Supreme Court ruling In North Georgia Finishing , Inc. V Di-Chem Inc. supra at 419 U.S. 601; Gross V Lopez Supra 419 U.S. 565 ruled that United States Constitutional mandates that in taking of a litigant's property rights consist of prima facie showing on issues of lack of merit & potential costs.

CCP 391.2 statute contains no prima facie Requirement on issues of lack of merit. **This conflicts with United States Ruling on same subject matter as a matter of law.**

[C] United States Supreme Court Ruling in Bell V Burson 402 U.S. 541-542; Armstrong V Manzo supra at 380 U.S. at p. 552 ruled that any hearing that excludes consideration of good cause without a determination of merits of issues including reasonableness of amount of security bonding

before court is a violation of a litigant's due process rights.

CCP 391.2, 391.3, 391.4 makes no mandated requirement of consideration of a litigant's right to Informa Pauperis status. **This conflicts with United States Ruling** as cited in above paragraphs.

[D] United States Supreme Court Ruled In Sniadach V Family Finance 395 U.S. 337 that property rights that are taken without a hearing on their merits constitute an illegal taking including situations where a plaintiff is deprived of their property if they comply or refuses to comply and incurs a dismissal.

Sheparidze Process Has an Inherent Defect [Stare Decisis General Ruling on A Legal Principle] Will Not Be Identified For A Specific Statute (I.E. CCP 391) If That Particular Statute Was Not Identified By Court Ruling

When a litigant Shepardizes **CCP 391** none of the **4 aforemtioned Stare Decisis United State**

Supreme Court Ruling cited above are identified as being relevant on security bonding and property rights under Due Process.

Breadreau V Superior Court of LA supra at 121 593 explicitly ruled that the Judicial procedures associated with Vinncombe V State of California 172 Cal.App.2d at 54 which involved Government Code 16047 which required a $ 500 deposit by Plaintiff without any hearing on the merits supra at 56 was ruled constitutional by California's First Dist., Division Two were unconstitutional as a violation of Due Process by being an Illegal taking of a litigants property rights.

Petitioner In Cases RG04179089; RG04179093; RG04179104, RG014181868 and RG04181861 Had 3 Identical Causes of Action That Were Determined To Have No Reasonable Probability To Prevail. Yet Trial Court in RG04181861 Ruled That 3 Identical Causes of Actions Overruled a Demurrer with Leave to Amend To 2 Other Causes of [SEE EXHIBIT# 2]

Trial and Appellate Court of Appeal are bound by United States Supreme Court **Stare Decisis relevant ruling on legal issues such as [1]** Security Bonding statutes which require a security bonding without a prior determination of merits constitutes an illegal taking of one's property rights **[2]** Property rights prior to being taken involve a hearing on the merits **[3]** Prima facie is legal standard to determine one's property rights as a general legal standard for security bonding therefore Petitioner's Due Process, Equal Protection and First amendment rights are being violated.

Trial's Court's 2ND Due Process Violation – It's Failure To Provide Notice And Opportunity To Respond To It's APRIL 6TH, 2005 Court Order Violated Petitioner's Due Process As Determined By This Court In Morgan ET AL V United States ET AL 304 U.S.

The Following Laws As Determined By This Court And California's Supreme Court Mandating That Notice And Opportunity To Respond Under Due Process

The court in **Morgan ET AL V United States ET Al 304 U.S. 1, 26 RULED:** That any hearing .... Or otherwise as a **PRINCIPLE OF LAW** must afford all litigants knowledge and an opportunity to respond pertaining to the factual and legal issues being considered by the court prior to its final determination.

The Court in **Morgan ET AL V United States Et AL 304 U.S. 1,26 RULED AS A PRINCIPLE OF LAW:** in requiring a full hearing has regard to judicial standards – not only in any technical sense, but with respect to those fundamentals of fairness which are the essence of due process in a proceeding of a judicial nature. Those requirements relate not only to a taking and consideration of evidence but also to the concluding as well as the beginning and intermediate steps in procedure.

The United States Supreme Court in Morgan V United States 304 U.S. 1,26 mandated that all litigants under Due Process of The U.S. Constitution are entitled to Notice of new or additional facts/legal issues the Court will rely on to make it's ruling.

Judge Richman by making a written Court Order on April 6th, 2005 that was based on new facts and without presenting Petitioner of any Notice and Opportunity to respond violated Principle of law

established by the United States Supreme Court in

Morgan V United States 304 U.S. 1, 26.

California Supreme Court In Moore V California Minerals CORP 115 CA2D AT 834 Established The Same Right Of Due Process As United States Supreme Court In Morgan V United States 304 U.S. AT 1, 26 Which Judge McGuiness And Judge Richman Violated.

Trial Court's 3RD Due Process Violation – United States Supreme Court In United States V Western 9TH CIR. 448 F2D 627,635 Mandated That Facts Not Contained In Court Record Violate A Litigant's Due Process Rights And Therefore Cannot Be Relied Upon By Trial Court

Trial Court's 4TH Due Process Violation – Trial Court's Allegation Contained No Supporting Evidence As Required By Statute And Case Law

THE FOLLOWING IS UNDISPUTED:

Evidence Code 550 mandates that the moving party has the burden to provide supporting evidence of the alleged facts/allegation/charges being made by moving party.

Case Law In **Smith, Smith & Kring V Superior Court 60 Cal.App.4th 577/578** Court Ruled that moving party allegations/facts must be disregarded if no supporting evidence is before the court on those allegations being made.

Trial Court failed to abide by Statutory Law (**Evidence Code 550**) and Case Law **Smith, Smith & Kring V Superior Court 60 Cal.App.4th 577/578** when it failed to produce any evidence supporting it's allegations contained in it's April 6th, 2005 Court Order.

LEGAL ARGUMENT#2

California's Trial And Appellate Court Judges Engaged In Judicial Procedures Which Violated Petitioner's Due Process And Equal Protection Legal Rights Therefore Constituted Judicial Bias 20-30

This Court in **Gomez V United States 490 U.S. 648,688; Tummy V Ohio 273 U.S. 510, 535; Arizona V Fuliminante 499 U.S. 279 and California's People V Brown 6 Cal.4th 322,335**

Ruled That Structural mechanism which creates a violation of an Appellant's Due Process Legal rights constitutes **Judicial Bias Per Say.**

How California's Trial And Appellate Court Judicial Process Engaged In A Structural Judicial Process Which Violated Petitioner's Due Process Legal Rights As To Constitute Judicial Bias

California's Trial and Appellate Court After 1985 till date of this petition has Refused To Apply The 3* Legal Principles associated with Stare Decisis Court Ruling on Security Bonding made by this Court [In Board of Regents V Roth 408 U.S. 564 Procedures which property interest can be taken if a party gives money/property or be dismissed constitute an Illegal taking of Property; North Georgia Finishing Inc. V Dichem Inc. supra 419 U.S. 601; Gross V Lopez supra 419 U.S. 565 Standard of Review Prima facie showing of merit ; and a Right To Informa Pauperis consideration Conover V Hall

supra 11 Cal. Rptr3d at pp 850-853.] **which Denied Petitioner and all other Alleged Vexatious Litigant's a Fair Trial By Excluding From Consideration relevant Stare Decisis Court Ruling Applicable to CCP 391.**

* Which Petitioner Made California's Trial and Appellate Court Aware of since 1996 to date of this complaint.

California's Trial and Appellate Court's Has Refused To Apply Seven Year STATUTE OF LIMITATION of CCP 391(B)(1)...

** California's Trial and Appellate Court Since 1999 till Date of this Writ had knowledge that Statutory and Case Law limited their Legal Jurisdiction to Apply **CCP 391(B)(1)...]**

California's Trial and Appellate Court Has Refused To Grant Vexatious Litigants a Right To an Noticed Hearing On The Merits by a Prima Facie Legal Standard with an Opportunity To Respond [Petitioner since 1993

till Date of this Writ has Raised Legal Right Under CCP 391 to Have an Objective determination by Demurrer or Judgment on The Pleading] **Which They have Refused to Consider and or apply as required by United States Supreme Court Stare Decisis Ruling.**

California's Trial and Appellate Court in making a Vexatious Litigant determination has a pattern and practice to Rely on Facts outside The Court Record [See April 6th, 2005 Order by Trial Judge **Appendix Exhibit# 3]**

California's Trial and Appellate Court under **CCP 391.2** does not have to make a evidentiary hearing on the merits thus it fails to comply with statutory law **Evidence Code 550 and Case Law Smith, Smith and Kring V LA Superior Court 60 Cal.App.4th at 577/578** which mandate all factual allegations must be supported by evidence which conflicts which is consistent with **Stare Decisis Ruling cited above.**

California's Trial and Appellate Court refused to respondent to Judicial Bias allegations Motions brought before them by failing to file and serve a response under the penalty of perjury. **The Appellate Court Judge filed no response to my Motion of His disqualification for judicial bias.** **The most objective determination that above judicial procedures are structural bias is that in 4 different lawsuits [RG04179089 RG04179093 ,RG04179104 and RG04179068] with identical cases of action . The Trial Court in Applying CCP 391 in the aforementioned Security Bonding cases found no reasonable probability to prevail.**

In case RG04181861 which was non-security bonding case with identical causes of action. Defendant's Demurrer was overruled as to 3 causes of action with leave to amend two causes of action **See Appendix Exhibit # 2.**

The most compelling statistic that California's Trial and Appellate Courts have engaged in a structural bias environment is: From 1965 till 2005 only one Vexatious Litigant has been removed from the list and that was after the year 2002.

SUMMARY

Our Country was established and continues to be a Country of laws where fairness is the primary objective of our judicial system.

Our Courts had a legitimate right to limit access to our judicial process. The Court's right to limit access to our judicial process is limited by the Federal Constitution.

This Court In Kelly V Johnson 96 S. Ct. 1440, 425 U.S. 238 States The issues Clearly: The 14th Amendment's prohibition against a state depriving any person of life, liberty or property without due process of law affords not only a procedural guarantee against the deprivation of "liberty" but likewise protects substantive aspects of liberty against unconstitutional restrictions by the state.

Individuals on The Vexatious Litigant list have become a Symbol that is analogous to the function of the A in the Scarlet letter [negative].

The Manner by which the Vexatious Litigant has been applied against Petitioner among others is analogous to a black List. The Vexatious Litigant List Functions on A process similar to Joseph McCarthy's black list.

Vexatious Litigant List Since 1965 has had over 3500 individuals of which only 1 to my knowledge (in 2002) approximately was removed from that list.

It is imperative that this Court overturn the judicial procedures which have created, maintain a black list that have deprived petitioner and others of our basic constitutional rights of Due Process; Equal Protection and First Amendment rights.

California's Trial And Appellate Courts Have Engaged In Judicial Procedures That Deviates From Established Principles Of Law As Follows

California's Trial and Appellate Courts have

Refused To consider and or Apply Stare Decisis

Court Ruling Made By The United States Supreme

Court on relevant subject matter [Property Rights

associated with Security Bonding and one's Due

Process Constitutional right]

The Court In **Auto Equity Sales V Superior Court 57 C2nd supra at 459 Ruled** Under the doctrine of Stare Decisis all tribunals exercising inferior jurisdiction are required to follow the decisions of courts exercising superior jurisdiction... **the starting part of the opinion is its conclusion that the particular kind of judicial error** – deliberate refusal to follow the law declared a controlling higher court jurisdiction **is a judicial defect** that renders the judgment of either a trial court or appellate court subject to restrain by prohibition or annulment on certiorari. **The Abelleria Case** ... held that the rule of **Stare Decisis** was a rule of jurisdiction for the reasons stated in that case, that rule is also one of jurisdiction for the purpose of the writ of certiorari.Therefore the Appellate department of the Superior court exceeded its jurisdiction when it refused to follow **Kroiss V Butler 57 C2d 456.**

California's Trial And Appellate Courts Failed To Consider And Or Apply Various Ruling Made By This Case Which Were Applicable To Security Bonding Statute CCP 391 As Cited In This Writ.

California's Statue CCP 391 Security bonding is done without a determination of merits and Review by Prima facie Standard. This is a material deviation from the principle of law established by this court pertaining To Petitioner's Property Rights and Constitutional Rights of Due Process. This Court has established as a legal principle that all property rights must be protected from an illegal taking. The Illegal Taking exists when a party must either pay a monetary amount or face the dismissal of their property rights where no hearing on merits exists.

California's Vexatious Litigant statute on its face deviates from the legal principle established by this Court pertaining to what constitutes an illegal taking of property.

California's Vexatious Litigant Statute CCP 391 Has Involved Into A Process Which Prevented All Those Labeled As A Vexatious Litigant From Participating In The Judicial Process On A Permanent Basis Regardless Of The Merit Of Our Cases without our Right To Proceed In Forma Pauperis.

Since 1965 to 2005 a period of approximately 40 years at least 3500 individuals have been determined to be a vexatious litigant yet only 1 individual has had been removed from the vexatious litigant list. It has become a permanent means to remove those labeled as a vexatious litigant from participation in the judicial process. In my particular case in the past I have had been labeled a vexatious litigant where I filed the identical claims as other non-vexatious litigant. They had been allowed to proceed and I was denied that legal right. In the past my complaints had overruled demurrer motions. Yet I was denied a right to file my legal complaints. In the past I was determined to be a vexatious litigant without any

hearing, hearing without any determination of merits of my case.

"While the legislature may elect not to confer a property interest... it may elect not to confer a property interest...it may not constitutionally authorize the deprivation of such interest....once conferred, without appropriate procedural safeguards ..(Arnette V kennedy 416 U.S. 134,167

Petitioner is asking this court to be fair and Apply Justice whereby mine and all others constitutional protected rights are being enforced. This Court has a responsibility to Society as a whole to have restored in the State of California integrity in protecting Petitioner among others similarly situated Constitutionally Protected Legal Rights pertaining to the 1st, 5th and 14th amendment.

DATE: May 19th , 2006

Fred Whitaker

MR. FRED WHITAKER

APPENDIX

[1] EXHIBIT#1: April 6™, 2005 Vexatious Litigant Determination Trial Court Order **PAGES 32-62**
[2] EXHIBIT#2: May 17th , 2005 Trial Court Order On Demurrer Overruled 3 Legal Challenges To My Causes of Action **PAGES 63-67**
[3] EXHIBIT#3: May 12, 2005 Court of Appeal, Order Denying Petitioner's Application To File A Petition For A Writ **PAGE 68**
[4] EXHIBIT#4 Court Of Appeal Order Denying My Appeal and Motion of Disqualification Upon Justice McGuiness **PAGES 69-70**
[5] Exhibit#5 Court of Appeal Denial of Appeal and Disqualification of Justice **PAGES 71-72**
[6] Exhibit#6 California Supreme Court Denial of Writ Safeway...etc **PAGE 73**
[7] Exhibit#7 California Supreme Court Denial of Writ Albertsons ..etc **PAGE 74**
[8] Exhibit#8 Court Order Denying Petitioner Right To Amend Complaint **PAGES 75-76**
[9] Exhibit#9 Court Order Denying Motion For New Trial ....etc **PAGES 77-78**
[10] Exhibit#10 Court Order Dismissing Petitioner's Legal Complaint **PAGES 79-80**
[11] Exhibit#11 Dismissal Order **PAGES 81-82**
[12] Exhibit#12 Order To Furnish Security Bonding **PAGES 83-84**
[13] Exhibit#13 Stay Order **PAGE 85**
[14] Exhibit#14 Constitutional, Provisions, Statutes, Orders etc **PAGES 86-87**

EXHIBIT#1

ENDORSED
FILE
ALAMEDA COUNTY
APR – 6 2005

Clerk of the Superior Court
By E. Opsiski-Erickson Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

FRED A. WHITAKER	No.RG04181861
Plaintiff	) ORDER DENYING) MOTION TO) REMOVE FRED A.) WHITAKER FROM
vs.	) JUDICIAL COUNCIL) OF CALIFORNIA)VEXATOUS LITIGANT LIST
Andronico's Market) aka Andronico's and Does 1 through 10)	
Defendants	

The Motion Of Plaintiff Fred A. Whitaker ("Mr. Whitaker") "To Remove Fred A. Whitaker from

Judicial Council of California Vexatious Litigant List" ("the Motion) Came on for hearing onJanuary 13, 2005 in Department 31 of this Court, the Honorable James A. Richman presiding, against the background set forth below .Plaintiff appeared on his own behalf. There were no other appearances.

The Court has considered all the papers filed on behalf of Mr. Whitaker, as well as The Court's files pertinent to the matter, and Mr. Whitaker's arguments at the hearing. Based thereon and good cause appearing, the Court HEREBY ORDERS that Mr. Whitaker's Motion is DENIED. The reasons follow.

I. The Background

By way of background, Mr. Whitaker was declared a vexatious litigant by Order of This Court dated November 22, 1991 in Alameda County Superior Court Case No. C-687320. Subsequently In May 1992 the Court of Appeal also determined in a

published Opinion that Mr. Whitaker was a vexatious Litigant. 1 (See **In ReWhitaker** (1992) 6 Cal.App.4th 54.)

According to Exhibit 1 to Mr. Whitaker's Declaration in support of the Motion, in 1999 he attempted to have his name removed from the Judicial Council Vexatious Litigant List (the **List),** but the Judicial Council declined. The record reflects no further Attempts by Mr. Whitaker in this regard until October 4, 2004, when Mr. Whitaker Moved Ex parte for an "order directing the Council of Judicial Performance to remove his name" From the **List,** which requests was denied by Presiding Judge Miller, "without prejudice, to bring before the court's law and motion department.

1
The Court also notes the opinion of the Supreme Court of the United States in *Whitaker V Superior Court of California ,San Francisco County* (1995) 514 U.S. 208
While not a vexatious litigant case, it is of relevance to the motion that in that case the

supreme Court of The United States noted that Mr. Whitaker "is a prolific filer in this Court" and not only refused to accept from him petitions for extraordinary relief in non-criminal matters (subject to certain exceptions), but extended that sanction to a prohibition on the filing by Mr. Whitaker of Writs of Certiorari in non-criminal matters on account of his repetitious and frivolous requests" (514 U.S. at 209-210).

As reflected in Exhibit#2 to his declaration, Mr. Whitaker, apparently then sent a letter to the judicial Council. The Judicial Council responded by letter of October 14, 2004, which after acknowledging Mr. Whitaker's letter and referring to its duty under the law, advised Mr. Whitaker that "[in] order to delete a name from the vexatious litigant list, the Judicial Council must receive an order directly from the issuing court. The Judicial Council does not have the authority to delete a name under any other conditions. On October 25, 2004 Mr. Whitaker again moved ex-parte in this Court, this time seeking two things☹1) a pre-filing order under Code of Civil Procedure section 391.7; and (2) an order directing that his name be

removed from the list as a vexatious litigant. Mr. Whitaker's ex-parte application came on October 25, 2004 before Judge Freeman, who granted the first request and granted Mr. Whitaker leave to file the complaint in this case. As to Mr. Whitaker's request to remove his name from the List, Judge Freeman ordered as follows: "requests for order directing the Council of Judicial Performance [sic] to remove Fred Whitaker's name from the vexatious litigant list is DENIED. Petitioner Whitaker has not provided any authority standing for the proposition that the brand of 'vexatious litigant' can be erased once applied. (PBA, LLC V KPOD, Ltd. (2003) 112 Cal.App.4th 965). Even if it is theoretically possible to remove the brand of vexatious litigant, at a minimum, to cast off the vexatious litigant label the court would have to find a change of facts or circumstances relating to the original determination. Petitioner Whitaker failed to establish such facts.

Pursuant to the first part of Judge Freeman's Order, on October 25, 2004 Mr. Whitaker filed the complaint in this action with the parties list as follows: *Fred A. Whitaker vs. Andronico's Markets AKA Andronico's"* Meanwhile, Mr. Whitaker moved ex-prate for reconsideration of the second part of Judge Freeman's Order, which was denied by order entered November 5, 2004. This Motion Followed.

The Motion originally came on for hearing on December 20, 2004; Mr. Whitaker appeared and the court heard argument from him. Following the hearing the Court continued the matter to January 13, 2005 and requested further briefing on two cases: PBA, LLC V KPOD, Ltd. (2003 112 Cal.App.4th 965 ("PBA) and WOLGFRAM V WELLS Fargo Bank (1997) 53 Cal.App.4th 43 ("Wolfgram"). Mr. Whitaker filed his "additional brief on December 29, 2004. It bears noting for reasons detailed more fully below that Mr.

Whitaker's "additional brief" states on the cover page that the plaintiff is no longer simply Mr. Whitaker, but rather *Mr. Fred A. Whitaker , individually and on behalf of all others similar situated under Business and Professions Code 17200"*

The continuing hearing took place on January 13, 2005 with Mr. Whitaker the only person appearing. As noted at the conclusion of the hearing the court took the matter under submission.

I. The Law.

While California case law contains an abundance of cases relating to parties being declared vexatious litigants, there is a dearth of case law relating to how if at all, a vexatious litigant may have that status removed. Likewise the statutory framework governing vexatious litigants (CCP 391-391.7) is also silent on the issue.

The two reported cases to touch on the issue are those on which the court requested additional briefing *PBA* and *Wolfgram*. While *Wolfgram* does not directly address the question of whether and if so, how a vexatious litigant may have that status removed, the discussion in that opinion nonetheless offers insight into that issue. In *wolfgram*, appellant was a vexatious litigant who challenged the statutory framework governing litigants on, *inter alia*, the ground that the so-called "prefiling order naming him a vexatious litigant and requiring him to get permission prior to filing new lawsuits was both a prior restraint and violation of his due process rights. The *Wolfgram* court rejected those arguments. Of particular relevance here is the following analogy: "The prefiling order component of the vexatious litigant statute is a necessary method of curbing those for whom litigation has become a game... to the extent it keeps vexatious litigants from clogging courts, it is

closer to 'licensing or permit systems which are administered pursuant to narrowly drawn, reasonably and definite standards "which represent "government's only practical means of managing competing uses of public facilities [.]" (Citation omitted) When a vexatious litigant knocks on the courthouse door with a colorable claim, he may enter (*Wolfgram* 53, Cal.App.4th at 60)

As PBA court later noted, the *Wolfgram* court's analogy to a licensing system suggests that it viewed the "pre-filing order" as a permanent limitation on the unferred right of a vexatious litigant to file lawsuits on his or her on behalf. (See PBA, 112 Cal.App.4th at 975). It is also worth noting that nowhere in its discussion of such prefiling orders did the *Wolfgram* court suggest that there exists any means for a vexatious litigant to have that status removed. (See generally, 53 Cal.App.4th at 60-62.).

Unlike the *Wolfgram* court, the court in PBA directly addressed the issue before the court here. There on appeal, one party to the section (PBA) challenged the ruling of one trial Judge vacating an order of another trial Judge in which defendant/cross-complaint Kennedy was declared a vexatious litigant and was required to obtain court permission prior to filing any new actions. The PBA court agreed that the second judge had abused his discretion in vacating the order of the prior judge and, in its opinion so concluding, set forth the legal analysis most on point with respect to the issue before this court in the motion.

The PBA court began by noting as follows: "Despite the apparent unfairness of permanently branding a person as a vexatious litigant, it is unclear how the vexatious litigant determination can be erased in appropriate cases. The statutory scheme of sections 391 through 391.7 does not itself provide a procedure mechanism for

dissolving an order declaring a person a vexatious litigant. Indeed in most cases, vacating the vexatious litigant determination appears to be precluded by section 1008 beyond 10 days of notice of entry of the finding. " (PBA, 112 Cal.App.4th at 975 [emphasis in original].)

The PBA court's apparent unease with the idea that the vexatious litigant label can never be removed was also reflected in its discussion of *Wolfgram* (in which, as noted above, the PBA court agreed that the *Wolfgram* court did in fact imply that the label was permanent). The PBA court noted:" While there is much recommended [the reasoning of the *Wolfgram* court], the conclusion section 391.7 is to be a permanent, irrevocable restriction is troubling. Although section 391.7 does not absolutely exclude the "per per" litigant from the court, we believe fundamental fairness requires the "vexatious litigant" brand to

be erasable in appropriate circumstances". (ID at 975-976).

Having concluded that fundamental fairness requires that a person be able to be "designated" as a vexatious litigant, the PBA court unfortunately stopped short of articulating a bright-line legal standard for doing so." In the present case, we need not reach the issue of whether or not the brand "vexatious litigant' can be erased once applied. At a minimum, to cast off the vexatious litigant label the court would have to find a change in facts or circumstances relating to the original determination". (PBA at 976). Put another way, the vexatious litigant statute bears the burden of show[ing] a change in facts indicating a mending of his ways or conduct to support a reversal of the original determination that he is a vexatious litigant. (ID). In making that showing, it is not enough for the vexatious litigant to show circumstances warranting sympathy toward the

legal position that he or seeks currently to articulate; rather, the vexatious litigant must " show he [has] ceased the behavior which defined him as a vexatious litigant under section 391, subdivision (B)(3).(ID at 977)

This then the court concludes, is a burden that Mr. Whitaker must meet in order to prevail on the instant motion: he must demonstrate a change in facts indicating that he has mended his ways or the conduct that led to him being named a vexatious litigant in the first place – by not just one, but two courts. And in attempting to do so, it is not sufficient for Mr. Whitaker to argue the merits of the present action. The Court concludes that Mr. Whitaker has failed to meet his burden.

III. ANALYSIS

In determining whether or not Mr. Whitaker has shown facts demonstrating that he has mended his ways vis-à-vis the conduct that resulted in him being declared a vexatious litigant in1991 and

1992, it is course, necessary to begin with that conduct.

As noted above, Mr. Whitaker was declared a vexatious litigant by this court on November 22, 1991 in its "order Granting to require Plaintiff to obtain a Prefiling Order in future Litigation Pursuant to CCP Section 391.7 in Alameda County Superior Case No. C-687320. In that Order the Court that "having considered both the moving and the opposition papers, and particularly the evidence upon the motion... [Mr. Whitaker] is a vexatious litigant...[and] shall be required in any future litigation in the courts of this state in pro per to obtain a prefiling order from the presiding judge of the court where the proposed litigation is to be filed.

The arguments and evidence on which the court's November22, 1991 Order were based contained in moving filed in Case No. C- 687320 on about October 23, 1991. In those papers, the

moving party seeking to have Mr. Whitaker declared a vexatious litigant pointed out twelve prior lawsuits filed by Mr. Whitaker in Alameda County from 1985 to 1989, all of which had adverse to Mr. Whitaker. (See "Notice of Motion and Motion for order Declaring Plaintiff a Vexatious Litigant and Requiring Plaintiff to Furnish Security Pursuant to CCP 391.1 "(Alameda County Superior Case No-C-687320), filed October 23, 1991 at 5:6-7:6 and Exhs A-L.). It was also noted at that time that in four of those twelve cases, Mr. Whitaker had already been declared a vexatious litigant, although no prefiling orders had apparently been imposed upon him. (See Alameda County Superior Court Case Nos. C-603795, C-617979, C-639968 and C-641237.)

Moreover as also noted above, the court of appeal in 1992 declared Mr. Whitaker a vexatious litigant in a published opinion **In Re Whitaker** (1992) 6 Cal.App.4th 54. Tellingly that opinion

begins with the following statement by Justice Poche: "Today, we take one small step to eliminate an obvious waste of judicial resources. We hold that Fred A. Whitaker comes within the statutory definitions of a vexatious litigant". (ID at 55). The Court of Appeal went on to declare Mr. Whitaker a vexatious litigant under two separate provisions of the statutory scheme, CCP 391(B) (1) and CCP 391(B) (3).

With respect to CCP 391(B)(1) which allows one to be named a vexatious litigant who, in the immediate preceding seven-year period, has, commenced, prosecuted or maintained in propria persona at least five litigations (other than small claims) which have been finally determined adversely to that person, the **In re Whitaker** court elaborated:

The records before bus show that since 1985 Whitaker has filed at least 24 actions in the Alameda Superior Court. In Five of those actions a demurrer was sustained without leave to amend. In one a defense motion for a summary judgment

was granted. Another had the trial court granting a defense motion to strike Whitaker's complaint. In yet another, the court ended one action when it denied Whitaker leave to file an untimely claim against a government entity. Two actions involved complaints filed by Whitaker in 1986 which did not get off the ground because Whitaker never service on the intended opposing parties. In one case a dismissal with prejudice was entered against Whitaker. In another Whitaker lost in something of a default situation. In no less than 13 of the actions Whitaker was ordered to furnish security as required by orders finding him to be a vexatious litigant. The bottom line is that Whitaker has not won any of the actions he began in the Alameda Superior Court.

In this court Whitaker's score is only minusculely better. He has filed 35 writ and appeal proceedings. Of his 19 petitions for extraordinary Writs, 2 were dismissed for procedural defects and 17 including 6 generated by a single superior court action were summarily denied. With respect to Whitaker's sixteen appeals, seven were dismissed, eight were affirmed, and only one was reversed. That reversal involved only a pretrial matter in a case subsequently resolved against Whitaker. **(In re Whitaker, 6 Cal.App.4th at 56).**

As to CCP 391(B) (3) which defines as a vexatious litigant "a person who...in any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleading or other papers... or engages in other tactics that are frivolous..." the

Court of Appeal noted that Mr. Whitaker had repeatedly reargued a rejected legal contention namely that the litigant statutes are unconstitutional. By doing so, Mr. Whitaker was held to have engaged in frivolous conduct and repeatly misused the courts of this state. (In **re Whitaker,** 6 Cal.App.4th at 56-57). Accordingly Mr. Whitaker was named a vexatious litigant pursuant to CCP 391(B) (1) and 391(B) (3).

The above demonstrates that Mr. Whitaker was initially named a vexatious litigant on account of both the number of, and lack of merit in, lawsuits he had filed, as well as his tendency toward frivolous conduct, in particular his propensity to rehash legal arguments that had already been rejected, sometimes on more than one occasion.

In claimed support of the instant Motion, Mr. Whitaker does not so much argue that he has changed his ways as he agues that there has been a "change in facts", specifically Mr. Whitaker

contends primarily that he should be removed from the vexatious litigant list because, in the 7 year period prior to the filing of the within action, he did not have five adverse ruling against him while acting in propria persona. Thus, Mr. Whitaker argues, he no longer meets the statutory definition of a vexatious litigant, and therefore must, as a matter of statutory interpretation, be removed from the list.

Of course, that argument ignores the fact that two separate courts of this state have already ruled that Mr. Whitaker is in fact a vexatious litigant. In other words, the statutory language is not the only hurdle that Mr. Whitaker must overcome, and it is not enough for him to argue that he longer meets the definition of a vexatious litigant. The fact of the matter is that by order of both this Court and the Court of Appeal Mr. Whitaker is a vexatious litigant and, as such, bears the burden of demonstrating a change of facts

showing that he has mended his ways. This he has not done.

Preliminarily, for guidance in evaluating how to determine whether a vexatious litigant has shown a "mending of the ways" sufficient to remove him or herself from the vexatious litigant list, the Court turns back to the analysis in the PBA opinion. There , the vexatious litigant, Kennedy, was originally named a vexatious litigant pursuant to CCP 391(B)(3) based on moving party PBA's motion, the evidence in support thereof, and the judge's own personal observation as to Kennedy being named a vexatious litigant in the first place included his accusing no fewer than eight judges of being biased, bigoted, or incompetent, his suing two judges in groundless proceeding, his referral to, or threat to refer to, the jurisdictional body overseeing them "virtually every judge who has ruled against him", and his accusation of no fewer than 15 attorneys of unethical conduct, perjury,

altering documents and incompetence. (See id.) Moreover, the judge who declared Kennedy a vexatious litigant specifically noted that the record supporting that determination was "amble', "overwhelming", and" dismal" (See id at 976).

In ruling that the second trial judge had abused his discretion in vacating the prior order naming Kennedy a vexatious litigant, the PBA court detailed why Kennedy had not met his burden of showing a change of facts or circumstances relating to the initial vexatious litigant determination against him. For example, while the second judge felt that there were additional mitigating circumstances that the first judge should have considered in making the vexatious ruling determination, the PBA court rejected that position, noting that it did not "amount to a change in the facts upon which the original determination was based." (Id at 977). The PBA court also rejected the second judge's approach of looking at

the merits of Kennedy's case and his credibility as a witness noting that neither of those factors had any impact on those actions that lead to him being named a vexatious litigant in the first place. (See id). Instead the PBA court pointed out that, subsequently to being named a vexatious litigant, "rather than ceasing his frivolous and delaying tactics... Kennedy brought... third and fourth declarations of bias and prejudice [against the judge who named him a vexatious litigant.] (Id. At 978.)

Like vexatious Litigant Kennedy in the PBA case, Mr. Whitaker has also failed to offer sufficient facts to demonstrate a change in the circumstances that led to him being named a vexatious litigant in the first place. As described in great detail above, the record indicates that Mr. Whitaker was originally named a vexatious litigant for a variety of reasons, including the sheer number of lawsuits filed, the lack of merit to the

vast majority of those lawsuits and his persistent engagement in frivolous behavior. **Although Mr. Whitaker is correct in stating that in the past seven years, he has not filed five lawsuits that have been determined adversely to him; such is by no means the end of the inquiry.** Indeed the records of this court are replete with examples demonstrating that Mr. Whitaker's litigation is still, in the words of the Court of Appeal, An obvious waste of judicial resources."

First it bears noting that the instant case is only on of seven actions that Mr. Whitaker currently has pending in this Court. The others are *Whitaker V Safeway Corp. (No. RG04179089), Whitaker V Smart & Final Corp., Inc. (No. RG04179093), Whitaker V Albertson Corp. (No. RG04179104), Whitaker V Cala Foods, Inc. (No. RG04181868), Whitaker V Souza's Liquor & Deli (No. RG04181844), and Whitaker v Gateway Supermarket (No. RG04181864).* In each of the

aforementioned cases Mr. Whitaker sought and obtained orders permitting the actions to be filed, in each he also sought unsuccessfully to have has name removed from the vexatious litigant list.

While it is true that Mr. Whitaker has obtained the above prefiling orders, thus demonstrating to the presiding judge of this Court that those actions have merit and were not filed for the purpose of harassment and delay (See CCP 391.7(b)), of particular concern to this court is the fact that in each of the above cases, as in the instant case, at some point after being granted leave to file the complaint, and after so filing it on behalf of himself alone, Mr. Whitaker then, without prior leave of court (and in some instances without even purporting to seek leave to amend the complaint), began referring to each of the above actions as being brought not just on his own behalf, but rather "individually and on behalf of all others similarly situated under Business and Professions

Code 17200". In other words, Mr. Whitaker made a requests to file a number of cases only on his own individual behalf and, having received permission to do so, then used the Court's authorization as a means o attempting to shoehorn himself in as a purported class representative –all without permission or leave of Court to do so. Moreover, in certain of the above actions, Mr. Whitaker also- again without leave of Court – began adding additional named plaintiffs to the captions of those actions, presumably as a means of ensuring that the actions could go forward with *some* named representative, even if that representative turns out not to be Mr. Whitaker himself 2 (See, e.g., "Notice and. Motion of To (sic) determination issues for Class Action" (Alameda County Superior Court Case NO. RG04181844 filed Dec. 10, 2004). This Court views those actions as a misuse of the prefling orders obtained by Mr. Whitaker on October 25,

2004 and certainly not the actions of a professed reformed vexatious litigant attempting to demonstrate his new-found respect for the processes of the courts of this state.

In addition, in certain of the now-pending cases Mr. Whitaker has demonstrated a propensity for making unsupported and improper challenges for cause, which challenges have been the added deficiency of being frivolous attempts to relitigate issues already decided adverse to Mr. Whitaker.

2 The Court notes that in the instant case Mr. Whitaker filed a Motion to determine class issues, which was heard on March 14, 2005 and which was denied by the Court by Order dated March 23, 2005

For example, in the instant case, Mr. Whitaker on March 28, 2005 filed three documents, entitled "Judge Richman Violated CCP 170.3, Judge Richman's Prior Judicial Practice To Make Subjective Determinations /Motives of acts I engaged In Violated my Due Process Constitutionally Protected Rights, and Renewed

Motion Under CCP 1008 Or In The Alternative A Motion For Reconsideration, respectively. These three documents are in large part, verbatim retreads of one another. Moreover, they each address almost exclusively what Mr. What presumptively assumed would be set forth in this very Order, Even through this Order was not issued nor even completed at the time the documents were filed. Put another way, Mr. Whitaker initiated a frivolous three-pronged preemptive strike on this Order before The Order was even issued 3

One day later on March 29, 2005, Mr. Whitaker filed an additional challenge for cause in this action against Judge Freeman. A similar challenge for cause was filed against Judge Freeman in the *Whitaker V Gateway Supermarket* case that same day.

As reflected in its order of March 30, 2005 the court in the instant action treated the first two

documents filed on March 28, 2005 collectively as a challenge for cause to Judge James Richman pursuant to CCP 170.1(a)(6) and 170.3 which challenge was stricken pursuant to CCP 170.4(B). On April 1, 2005 Judge Freeman filed verified answers to both challenges for cause filed by Mr. Whitaker against him.

Mr. Whitaker apparently not content to let the matter be, he subsequently filed on April 4, 2005 two new documents in this action entitled Plaintiff's additional Information in Support of My Renewed Motion For Reconsideration under CCP 1008" and Plaintiffs Opposition To Judge Richman's Order Striking My Challenge For Cause", respectively. Mr. Whitaker also filed on April 4, 2005 a "Renewed Motion Under CC 1008 or in The Alternative a Motion For Reconsideration", In the *Whitaker v Gateway Supermarket* action, this time apparently challenging Court's March 14, 2005 denial of Mr. Whitaker's motion To amend.

3 It appears from the Court's Register that Mr. Whitaker also inexplicably filed a preemptive Motion for Reconsideration of the instant Order On March 28, 2005 in the *Whitaker v Gateway Supermarket Action, Alameda County Superior Court Case No. Rg04181864*

As the above demonstrates, Mr. Whitaker has neither changed nor mended the behavior that led to him being declared a vexatious litigant in the first place. As he did nearly 15 years ago, he to this day persists in flouting the rules of the Court and making repetitive meritless legal arguments. When those arguments are adjudicated against him, Mr. Whitaker's favored ***modus operandi*** is to challenge the judge as adjudicating for cause and/or make multiple motions for reconsideration. These actions by Mr. Whitaker are, obviously, very similar to the unrepentant tactics employed by vexatious litigant Kennedy in the PBA case discussed above. Certainly they do not meet the standards articulated in that case for permitting a vexatious litigant to have that status removed. In

short Mr. Whitaker has failed utterly to meet his burden under PBA.

IV CONCLUSION.

In sum the law appears to permit a vexatious litigant to have that application removed from him or herself only by making a showing of a change of facts or circumstances relating to the original vexatious litigant determination, i.e., by showing that he or she has ceased the behavior which resulted in being named a vexatious litigant in the first place. Here, not only has Mr... Whitaker not made such a showing , the record in fact demonstrates quite the opposite, i.e., that Mr. Whitaker is still engaged in exactly the sort of frivolous misuse of the courts of this state that ran him afoul of both this Court and the Court of Appeal nearly 15 years ago. Accordingly, and for all of the reasons detailed above, M. Whitaker's Motion is DENIED.

DATE **Apr 6 2005** **"S/James A. Richman"**

James A. Richman

Judge of the Superior Court

Case No. Title RGo4181861 Whitaker V Andronico's

Market Aka Andronico's

CLERK'S CETIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the Alameda County Superior Court and not a party to this cause. I served this **ORDER DENYING MOTION TO REMOVE FRED A. WHITAKER FROM JUDICIAL COUNCIL OF CALIFORNIA VEXATIOUS LITIGANT LIST** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California following standard court practices.

Fred A. Whitaker
872 69th Avenue
Oakland, Ca. 94621

James D. Clayton
Kenneth W. Pritiken
William H. Curtis
Foley McIntosh Frey &

Claytor

3675 Mt. Diablo Blvd. Suite

250

Lafayette, Ca. 94549

Dated: April 6, 2005

Executive officer/clerk of the Superior

Court

By "S/ _____"

Elizabeth Opelski-Erickson

Deputy Clerk

EXHIBIT#2

FILED
Alameda County
May 17 2005
Clerk of the Superior Court
By "S/_____"
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

FRED A. WHITAKER	) RG04181861
	)
	)
Plaintiff,	)ORDER ON DEMURRER
	)& MOTION TO STRIKE
vs	)
	)
	)
Androico's Market	)
	)
Defendants	)
_____	)

Two matters came on regularly on May 16, 2005 in Department 31 of this court, the Honorable James A. Richman presiding: (1) Demurrer of Defendant Andronico's Market's ("Defendant") to

Complaint and (2) Motion of Defendant To Strike Portions of Complaint.

The Court has considered all the papers filed on behalf of the parties, and good cause appearing HEREBY ORDERS as follows:

[1] The Demurrer to the First Cause of Action, for Violation of **Revenue and Taxation Code 6359** is SUSTAINED WITH LEAVE TO AMEND, for Plaintiff Fred A. Whitaker ("Plaintiff") to allege, if possible, all of the requisite elements necessary to state a claim under Business and Professions Code 17200, as amended by Proposition 64, based on a violation of the **Revenue and Taxation Code 6359.** In this regard, the Court finds persuasive the decisions holding Proposition 64 to apply retroactively, such as Benson V kwikset Corp. 2005 126 Cal.App.4th 887, Branick V Downey Saving And Loan Ass'n 2005 126 Cal.App.4th 828 and Frey V Trans Union Corp. 2005 127 Cal.App.4th 986.

[2] The Demurrer to The Second Cause of Action, for Violation of the Food Stamp is **OVERRULED.**

[3] The Demurrer to the Third Cause of Action, for Violation of Public Resource Code 14504, is **SUSTAINED WITH LEAVE TO AMEND,** for Plaintiff to allege, if possible, all of the requisite elements necessary to state a claim under Business and Professions Code Section 17200, as amended by Proposition 64 based on a violation of the Public Resources Code.

[4] The Demurrer to the Fourth Cause of Action, For General Negligence is **OVERRULED.**

[5] The Demurrer to the Fifth Cause of Action, Entitled "Complaint for money – Common Count" the Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

[6] The Demurrer to the Fifth Cause of Action, for Conversation (mistakenly entitled Conversation") is SUSTAINED WITHOUT LEAVE TO AMEND

[7] The Demurrer to the Seventh Cause of Action entitled "Petition for Injunctive relief" is **OVERRULED.** Plaintiff has stated a cause of action for declaratory relief. (See Sauders V Cariss 1990 224 Cal.App.3rd 905 [erroneous labels to be ignored if complaint pleads facts which would entitle plaintiff to relief.)

[8] The Motion of Defendant to strike Portions of Complaint is **GRANTED** as to point 1 therein, **WITH LEAVE TO AMEND,** for Plaintiff to allege, if possible, all of the requisite elements necessary to state a claim or claims under Business and Professions Code Section 17200 as amended by Proposition 64.

The Court strikes from the first paragraph of the Complaint the words "acting as a private attorney general pursuant to Business and Professions Code Section 17200 and the words and the General Public.

[9] Plaintiff shall have 10 days to amend, which time

Shall run date of service of the Notice of Entry of This Order, which service shall be made by Defendant.

Dated **May 17, 2005** "S/_____"

James A. Richman

Judge of the Superior Court

EXHIBIT#3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

FRED A. WHITAKER
Petitioner,
V

THE SUPERIOR COURT OF ALAMEDA
A109786
COUNTY,

Respondent (Alameda County Super. Ct. No. RG04181861)

ANDRONICO'S MARKET et al...
Real Parties In Interest

BY THE COURT:

On May 9, 2005, Fred A. Whitaker submitted a document requesting that the undersigned judicial officer recuse himself from the above-reference matter and reconsider the May 5th, 2005 order denying his application for permission to file a writ petition. The requests is denied.

May 12, 2005 "S/_____"
McGuiness

EXHIBIT#4

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

FRED A. WHITAKER

Plaintiff and Appellant

V

A111956

SAFEWAY INC.

(Alameda County Super Ct. RG04179089)

Defendant and Respondent

BY THE COURT:

Fred A. Whitaker has previously been to be a vexatious litigant and is subject to a prefiling order. On November 22, 2005 Mr. Whitaker submitted an application for permission to appeal several court orders including the July 14, 2005 order dismissing the underlying action for failure to furnish to furnish security. Mr. Whitaker has also filed a motion to disqualify the undersigned judicial

officer pursuant to Code Of Civil Procedure

Section 170.3

The provisions of Code of Civil Procedure 170.3 do not apply at the appellate level (Code Civ. Pro. # 170.5 subd. (a) and hince the disqualification motion is denied. The application for permission to appeal is denied. Mr. Whitaker has not shown a reasonable possibility that his appeal has merit. (see Code of Civ. Proc. # 391.7)

Date: December 9, 2005 **"/S_____"**

McGuiness APJ

Justice

EXHIBIT#5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

FRED A. WHITAKER

Plaintiff and Appellant A111976

V.

ALBERTSONS INC. (Alameda County Super. Ct. RG04179104)

BY THE COURT:

Fred A. Whitaker has previously been found to be a vexatious litigant and is subject to a prefiling order. On November 22, 2005 Mr. Whitaker submitted an application for permission to appeal several trial court orders, including the July 14, 2005 order dismissing the underlying action for failure to furnish security. Mr. Whitaker has also filed a motion to disqualify the undersigned judicial officer pursuant to Code of Civil Procedure section 170.3.

The provisions of Code of Civil Procedure section 170.3 do not apply at the appellate level (Code Civ. Proc..,# 170.5 subd. (a)) and hence the disqualification motion is denied. The application for permission to appeal is denied. Mr. Whitaker has not shown a reasonable possibility that his appeal has merit. (See Code Civ. Pro., # 391.7)

DATE November 29, 2005 **"S/_____"**

_____A.P.J.

EXHIBIT#6

COURT OF APPEAL FIRST APPELLATE
DISTRICT DIVISION THREE
NO. A111272
S137461

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FRED A. WHITAKER, PETITIONER

V

SUPERIOR COURT OF ALAMEDA COUNTY,
RESPONDENT;

AQNDRONICO'S MARKET, REAL PARTY
in Interest

Petition for review **Denied**

SUPREME COURT
FILED

NOV – 2 2005

"S/ Fredrick K. Ohrich"

Deputy Clerk

EXHIBIT#7

Supreme Court
Filed
Feb 22 2006
Fredrick K. Ohirich Clerk

_____
Deputy

Court of Appeal
First Appellate District Division Five – No. A111976
S139724

IN THE SUPREME COURT OF CALIFORNIA
En Banc

FRED A. WHITAKER, Plaintiff and Appellant

V

ALBERSONS INC. Defendant and Respondent

Petition For Review Denied

George
"S/_____"
Chief Justice

EXHIBIT#8

DEPT NO 1

Superior Ct of California County of Alameda

December 21, 2005 Hon. Barbara J. Miller, Judge

Yolanda Estrada , Dep. Clk Not Reported

IN THE MATTER OF

Whitaker

Counsel Appearing Not Appearing
For Plaintiff

VS.

Albertsons Corporation
Aka Albertsons et al

Counsel Appearing Not Appearing
For Defendant

NATURE OF PROCEEDINGS: MINUTE ORDER
Case: **RG04179104**

(Not Reported)

It appears that on or about August 17, 2005 Plaintiff Whitaker submitted a written ex-parte request for permission to file an amended complaint in this action.

It is **ORDERED THAT** Plaintiff Whitaker's requests for permission to file an amended complaint in this action is deemed' moot on the following grounds:

1. The court notes the matter was dismissed on July 14, 2005 due to plaintiff's failure to furnish security as` ordered (CCP 391.4) Further on September 2n, 2005 the Court denied Plaintiff Whitaker's motion "of intent for a new trial" and motion "to move to set aside and vacate judgment and enter another and different judgment"

2. This Court further notes that plaintiff Whitaker filed a Notice of Appeal To The First District Court of Appeal on September 30, 2005 which appeals from several of this Court's ruling. That by letter filed with this Court on or about November 21, 2005, The First District Court of Appeal informed Plaintiff Whitaker that his appeal was in a state of suspension to proceed with the appeal as either the Hon. William E. McGuiness, Administrative Presiding Judge of that court, granted permission to proceed the appeal or, the matter was automatically terminated due to Plaintiff Whitaker's failure to obtain permission to proceed.

The persons listed below are notified by a copy of this minute order as addressed and mailed via U.S. mail:

Fred A. Whitaker
872 69th Avenue
Oakland, Ca. 94621

Cross J. Creason
Dillingham & Murphy,LLP
225 Bush St. Sixth Floor
San Francisco,Ca.94104

By "S/YOLANDA ESTRADA"
Deputy Clerk D-31

EXHIBIT#9

FILED
ALAMEDA COUNTY
Sept 2, 2005
Clerk of The Superior Court

FRED A. WHITAKER

Plaintiff

Vs

Albertson Corporation

Defendant

No. **RG04179104**

Order Denying Motions "Of Intent For A New Trial "& "To Set Aside & Vacate Judgment & Enter Another and Different Judgment"

Two separate matters filed on July 25, 2005 came on regularly for hearing on August 29, 2005 in Department 31 of this Court, The honorable James A. Richman, Presiding: **(1)** the motion of Plaintiff Fred A. Whitaker ("Plaintiff") "Of Intent For A New Trial" and **(2)** Plaintiff's Motion "Of Intention To Move To Set Aside and Vacate Judgment and Enter Another and Different Judgment," Plaintiff appeared on his own behalf. Defendant Albertsons Inc. ("Defendant") appeared by John N. Dalhberg.

The Court has considered all the papers filed on behalf of the parties as well as the arguments

presented at the hearing and good cause appearing, **Hereby Orders** as Follows:

(1) Plaintiff's Motion "Of Intent For A New Trial is DENIED.

(2) Plaintiff's Motion "of Intention To Move To Set Aside and Vacate Judgment and Enter Another and Different Judgment is DENIED

DATED Sep – 2 2005 "***S/*** _____"

James A. Richman

Judge Of The Superior Court

EXHIBIT#10

Dillingham & Murphy LLP
John N. Dahlberg (SBN 85122)
Cross J. Creason (SBN209492)
225 Bush Street, Sixth Floor
San Francisco, Ca. 94104-4207
Telephone (415-397-2700)
Facsimile (415-397-3300)

ENDORSED
FILED
Alameda County
Jul 14 2005
Clerk of the
Superior Court
By E. Opeiski-Enckson Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

FRED A. WHITAKER Case No. RG04179104

Plaintiff **Order of Dismissal**

V

Albertsons Corporation AKA Albertsons , et al

Defendant

On May 27, 2005, this Court granted defendant's Motion To Require plaintiff Fred A. Whitaker to furnish security in the amount of

$ 25,000 within 30 days of service of The Notice of Entry of Order. According to the ex-parte application of the moving party, applicant defendant **ALBERTSONS INC.** as well as this Court's own docket, The Notice of the May 27, 2005 Order was personally served on Mr. Whitaker on May 27, 2005. A true and correct copy thereof is attached as Exhibit#1. Plaintiff has not furnished security in nthe amount of $ 25,000 or in any amount at all. Accordingly thus matter is dismissed.

DATED: **Jul 14 2005** **"S/_____"**

The Honorable James A. Richman

JUDGE OF THE SUPERIOR COURT

EXHIBIT#11

Dillingham & Murphy LLP
John N. Dahlberg (SBN 85122)
Cross J. Creason (SBN209492)
225 Bush Street, Sixth Floor
San Francisco, Ca. 94104-4207
Telephone (415-397-2700)
Facsimile (415-397-3300)

ENDORSED
FILED
Alameda County
May 27 2005
Clerk of the
Superior Court
By E. Opeiski-Enckson Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

FRED A. WHITAKER Case No. RG04179104

Plaintiff **ORDER**

V

Albertsons Corporation AKA
Albertsons , et al

Defendant

On May 27, 2005 hearing was held on defendant **ALBERTSONS INC'S** Motion to Require Plaintiff Fred A. Whitaker To Furnish

Security, Moving party and Defendant Albertsons Inc. was represented by John Dalhberg of Dillingham & Murphy LLP; Plaintiff in pro per Fred Whitaker appeared on his own behalf.

The Court finds that plaintiff is a vexatious litigant and that there is no reasonable probability that plaintiff Fred A. Whitaker will prevail in this action. On that basis, plaintiff is ordered to furnish security in the amount of $ 25,000 within 30 days of service of Entry of Order.

DATED: **May 27, 2005** **James A. Richman**

"S/_____"

JUDGE OF THE SUPERIOR COURT

JAMES A. RICHMAN

EXHIBIT#12

FILED
Alameda County
05 Jan 12

Dillingham & Murphy LLP
John N. Dahlberg (SBN 85122)
Cross J. Creason (SBN209492)
225 Bush Street, Sixth Floor
San Francisco, Ca. 94104-4207
Telephone (415-397-2700)
Facsimile (415-397-3300)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

FRED A. WHITAKER

Plaintiff

V

Albertsons Corporation
AKA Albertsons ,et al

Defendant

Case No. RG04179104

NOTICE OF STAY OF ALL PROCEEDINGS CCP 391.6

DATE:Feb. 28, 2005
Time:9:00am
Dept:31
(Judge Richman)

Trial Date: None

TO PLAINTIFF IN PRO PER FRED A. WHITAKER AND TO THE JUDGES OF THIS HONORABLE COURT:

PLEASE TAKE NOTICE: That defendant ALBERTSONS INC has filed a motion for order requiring security pursuant to CCP 391.1 on January 12, 2005 Pursuant to CCP 391.7 , all proceedings in this action are stayed pending resolution of the motion as set forth in the statute.

DATED: January 12, 2005

DillingHam & Murphy LLP
John N. Dahlberg
Cross J. Creason
BY ___**"s/John N. Dahlberg**
Attorneys For Defendant,
ALBERTSONS INC.

EXHIBIT#13

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA DEPT NO 1

October 4, 2004 Hon. Barabara Miller Judge
Vicki Daybell
Deputy Clerk
Not Reported

Fred A. Whitaker Counseling Appearing Pro Per
Petitioner For Plaintiff
vs **FILED RG04179104**
ALAMEDA COUNTY
Albertsons Corporation **OCT 7 2004**
Aka Albertsons et al Clerk of the Superior Court
Defendant By "**S/** _____"

Deputy **Case No. Misc**

NATURE OF PROCEEDINGS: **MINUTE ORDER**

The matter is placed on calendar this date by order of the court.

Petitioner Fred A. Whitaker'sEx-Parte application for pre-filing order under Code of Civil Procedure section 391.7 is granted. Leave is granted to file the complaint in the matter entitled: Fred A. Whitaker V Albertson Corporation AKA Albertsons

EXHIBIT#14

THE CONSTITUTIONAL, PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE VEBATIM CITATION THEREOF

CCP 391: As used in this title, the following terms have the following meaning: **(A)**" Litigation means any civil action or proceedings, commenced, maintained or pending in any state or federal court **(B)" VEXATIOUS LITIGANT"** means a person who does any of the following:**(1)** in the immediately preceding seven year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing **(2)** after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy or any of the issues of fact of law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

California State Constitution Due Process and Equal Protection Art.1 #7

California Constitution Due Process and Equal Protection ...Art.1#7 Sec.7(a) a person may not be deprived of life, liberty or property without due

process of law or denied equal protection of laws provided, that nothing contained herein in this Constitution imposes upon the state of California or any public entity, board or official any obligations or responsibilities which exceed those imposed by the Equal Protection of the 14th Amendment To The United States Constitution with respect to the use of pupil school assignment or pupil transportation...etc

FEDERAL CONSTITUTION 14TH AMENDMENT

Federal Constitution 14th Amendment Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person citizens of the United States; nor shall any state deprive any person of life, liberty or property within its jurisdiction the equal protection of the laws